



In the Matter of:

RONALD J. THOMAS,

ARB CASE NO. 00-083

COMPLAINANT,

ALJ CASE NO. 00-STA-43

v.

DATE: November 15, 2000

HALL EXPRESS,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

This case arises under the employee protection provisions of the Surface Transportation Assistance Act ("STAA"), as amended and recodified, 49 U.S.C. §31105 (1994). The relevant facts in this case are as follows. Respondent hired Ronald Thomas as a truck driver on September 27, 1999, and fired him less than four months later for unsatisfactory performance. Thomas subsequently filed a complaint with the Secretary of Labor alleging that Respondent actually fired him because he reported a safety defect (*i.e.*, a bald tire) on Respondent's vehicle. In view of the allegedly retaliatory nature of his termination, Thomas argued that Respondent violated the employee protection provisions of the STAA which state, in relevant part:

(a) Prohibitions – (1) A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, privileges or employment, because –

(A) the employee or another person at the employee's request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety regulation, standard, or order, or has testified or will testify in such a proceeding

49 U.S.C. §31105(a).

Ultimately, this matter was referred to an Administrative Law Judge (“ALJ”) who held an evidentiary hearing. At the hearing, Becky Grier testified on behalf of Respondent. Grier stated that she summoned Thomas to her office on Monday, January 10, 2000, to give him a written warning regarding his repeated tardiness in reporting for work and failure to answer his pager while out on the road. According to Grier, when she met with Thomas, she was unaware that he had filed a faulty tire report on the previous Friday. Grier went on to state that, when she presented Thomas with the written warning, he became belligerent and refused to sign it. It was at that point that Grier fired him. Based on Grier’s testimony, the ALJ found that Respondent terminated Thomas because of his belligerence and not because he reported safety defects in Respondent’s vehicles. In light of that finding, the ALJ concluded that Respondent did not violate the employee protection provisions of the STAA. Therefore, by Recommended Decision and Order (“RD&O”) dated September 19, 2000, the ALJ recommended that Thomas’ complaint be denied.

The decision of the ALJ is now before the Administrative Review Board pursuant to the automatic review procedures under 29 C.F.R. §1978.109 (c) (1) (1999). Section 1978.109 (c)(2) permits both parties to file a brief in support of their respective positions within thirty days of the issuance of the ALJ’s decision. Neither party has elected to file a brief.

In the RD&O, the ALJ stated:

I find Grier to be a very credible witness. Thomas turned the report in the previous Friday and it is reasonable that Grier would not have read the report yet on Monday morning when she met with Thomas. Grier also testified she had met with Thomas at both her supervisor’s and dispatch’s request to present him with a warning for being tardy. She also stated that Thomas did not mention the faulty tire in the meeting and this is verified by Thomas’ testimony. Finally, I find the true reason for Thomas’ separation from Hall Express’ employment was his belligerence in the meeting with Grier. Grier testified that Thomas turned belligerent upon being presented with the written warning to sign and that she had to call the operations manager into the room. Since Grier had initiated the meeting solely to give Thomas written warning for tardiness and failing to answer pages and discharged him when the meeting ended in argument, I find Thomas’ belligerence to be the cause of his separation. I believe Grier’s testimony that any safety concerns that may have been expressed by Thomas had nothing to do with her decision to fire Thomas. Thomas has failed to establish a causal link between his protected activity and the adverse employment action.

Thomas has not identified any error in the ALJ's reasoning, nor do we see any. Accordingly, we find that Thomas has failed to establish that his termination violated the employee protection of the STAA and concur with the ALJ's recommendation that the complaint should be denied.

SO ORDERED

E. COOPER BROWN

Member

CYNTHIA L. ATTWOOD

Member

RICHARD A. BEVERLY

Alternate Member